Texas Department of Insurance
Division of Workers' Compensation
Medical Fee Dispute Resolution, MS-48
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645
512-804-4000 telephone • 512-804-4811 fax • www.tdi.texas.gov

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address
TRIUMPH HOSPITAL SAN ANGELO
c/o HOLLAWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name
LUMBERMENS MUTUAL CASUALTY CO

MFDR Tracking Number
M4-08-2554-01

Carrier's Austin Representative Box
21

MFDR Date Received
December 19, 2007

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary Dated December 18, 2007: "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of $40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%."

Amount in Dispute: $83,404.85

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary Dated November 28, 2011: "Because Requestor has not met its burden of demonstrating unusually extensive or unusually costly services, and the documentation adduced thus far fails to provide any rational for the Request's qualification for payment under the Stop-Loss Exception, Requestor appropriately issued payment per the standard Texas surgical per diem rate. No additional monies are due to the Requestor."

Response Submitted by: HANNA & PLAUT LLP, 211 East Seventh Street, Suite 600, Austin, TX 78701

Respondent's Supplemental Position Summary Dated DECEMBER 31, 2007: "Finally, nowhere in any of the submitted documentation does the Requestor indicate the services were unusually extensive or costly or anything other than routine. As the minimum Stop-Loss Exception threshold was not met, and as the Requestor failed to demonstrate the surgery was unusually costly or extensive, it has failed to meet the two-pronged Stop-Loss criteria and merits no additional monies."

Response Submitted by: HANNA & PLAUT LLP, 211 East Seventh Street, Suite 600, Austin, TX 78701

SUMMARY OF FINDINGS

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
February 14, 2007 through April 5, 2007	Inpatient Hospital Services	$83,404.85	$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits dated JULY 2, 2007

- W1 Workers Compensation State Fee Schedule Adjustment $0.00.
- W1 Workers Compensation State Fee Schedule Adjustment $55,900.00
- W1 Workers Compensation State Fee Schedule Adjustment

Explanation of benefits dated AUGUST 29, 2007

- 400-001 THE INPATIENT REIMBURSEMENT HAS BEEN BASED ON PER DIEM, STOPLOSS FACTOR OR BILLED CHARGES WHICHEVER IS LESS.
- 885-999 REVIEW OF THIS CODE HAS RESULTED IN AN ADJUSTED REIMBURSEMENT OF $0.00
- 885-999 REVIEW OF THIS CODE HAS RESULTED IN AN ADJUSTED REIMBURSEMENT OF $55,900.00
- 900 BASED ON FURTHER REVIEW, NO ADDITIONAL ALLOWANCE IS WARRANTED
- 975-640 NURSE REVIEW IN-PATIENT HOSPITAL/FACILITY/SUPPLY HOUSE
- 981 REVIEWED BY MEDICAL DIRECTOR
- W1 WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT
- W1 WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT $0.00
- W1 WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT $55,900.00
- W4 NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER REVIEW OF APPEAL/RECONSIDERATION

Explanation of benefits dated DECEMBER 14, 2007

- 400-001 THE INPATIENT TREIMBURSEMENT HAS BEEN BSED ON PER DIEM, STOPLOSS FACTOR OR BILLED CHARGES WHICHEVER IS LESS
- 885-999 REVIEW OF THIS CODE HAS RESULTED IN AN ADJUSTED REIMBURSEMENT OF $0.00
- 885-999 REVIEW OF THIS CODE HAS RESULTED IN AN ADJUSTED REIMBURSEMENT OF $55,900.00
- 900 BASED ON FURTHER REVIEW, NO ADDITIONAL ALLOWANCE IS WARRANTED
- 975-640 NURSE REVIEW IN-PATIENT HOSPITAL/FACILITY/SUPPLY HOUSE
- 981 REVIEWED BY MEDICAL DIRECTOR
- W1 WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT
- W1 WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT $0.00
- W1 WORKERS COMPENSATION STATE FEE SCHEDULE ADJUSTMENT $55,900.00
- W4 NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER REVIEW OF APPEAL/RECONSIDERATION

Issues

1. Did the audited charges exceed $40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee*

Guideline, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges ***in this case*** exceed $40,000; whether the admission and disputed services ***in this case*** are unusually extensive; and whether the admission and disputed services ***in this case*** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection…" 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "…to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed $40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "…Audited charges are those charges which remain after a bill review by the insurance carrier has been performed…" Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal $203,867.46. The division concludes that the total audited charges exceed $40,000.

2. The requestor in its position statement asserts that "Per Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of $40K, the entire admission will be paid using the stop-loss reimbursement factor ('SLRF') of 75%." The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed $40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed $40,000 and that an admission involved…unusually extensive services." The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).

3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds $40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must ***demonstrate*** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).

4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements.* The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

   - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of $1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission…" The length of stay was fifty days. The surgical per diem rate of $1,118.00 multiplied by the length of stay of fifty days results in an allowable amount of $55,900.00.
   - 28 Texas Administrative Code §134.401(c)(4)(C) states "Pharmaceuticals administered during the admission and greater than $250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time." A review of the submitted itemized statement finds that the requestor billed twelve units of Ceftriaxone Na at $438.75/unit, for a total charge of $5,265.00 and eighteen units of Daptomycin at $1,092.69/unit, for a total charge of $19,668.42.

The requestor did not submit documentation to support what the cost to the hospital was for Ceftriaxone NA and Daptomycin. For that reason, reimbursement for these items cannot be recommended

- 28 Texas Administrative Code §134.401(c)(4)(B) allows that "When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iii) Computerized Axial Tomography (CAT scans) (revenue codes 350-352, 359)." A review of the submitted hospital bill finds that the requestor billed $6,345.00 for revenue code 350 – CT scan. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide "documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement." Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 350 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended

The division concludes that the total allowable for this admission is $55,900.00. The respondent issued payment in the amount of $69,495.74. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed $40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount,* and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to $0.00 reimbursement for the disputed services.

Authorized Signature

Signature	Medical Fee Dispute Resolution Officer	11/30/12 Date
Signature	Medical Fee Dispute Resolution	11/30/12 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party**.

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.